

## Health and Human Services

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AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 66 FR 4243, Jan. 17, 2001, unless otherwise noted.

### Subpart 316.3—Cost-Reimbursement Contracts

#### 316.307 Contract clauses.

(a) If the contract is with a hospital (profit or nonprofit) for research and development, modify the “Allowable Cost and Payment” clause at FAR 52.216-7 by deleting from paragraph (a) the words “Subpart 31.2 of the Federal Acquisition Regulation (FAR)” and substituting “45 CFR Part 74 Appendix E.”

(j) The contracting officer shall insert the clause at 352.216-72, Additional Cost Principles, in all solicitations and resultant cost-reimbursement contracts.

### Subpart 316.6—Time-and-Materials, Labor-Hour, and Letter Contracts

#### 316.603 Letter contracts.

##### 316.603-3 Limitations.

An official one level above the contracting officer shall execute the prescribed written statement.

##### 316.603-70 Information to be furnished when requesting authority to issue a letter contract.

The following information should be included by the contracting officer in any memorandum requesting approval to issue a letter contract:

(a) Name and address of proposed contractor.

(b) Location where contract is to be performed.

(c) Contract number, including modification number, if possible.

(d) Brief description of work and services to be performed.

(e) Performance or delivery schedule.

(f) Amount of letter contract.

(g) Estimated total amount of definitized contract.

(h) Type of definitive contract to be executed (fixed price, cost-reimbursement, etc.)

(i) Statement of the necessity and advantage to the Government of the use of the proposed letter contract.

(j) Statement of percentage of the estimated cost that the obligation of funds represents. In rare instances where the obligation represents 50 percent or more of the proposed estimated cost of the acquisition, a justification for that obligation must be included which would indicate the basis and necessity for the obligation (e.g., the contractor requires a large initial outlay of funds for major subcontract awards or an extensive purchase of materials to meet an urgent delivery requirement). In every case, documentation must assure that the amount to be obligated is not in excess of an amount reasonably required to perform the work.

(k) Period of effectiveness of a proposed letter contract. If more than 180 days, complete justification must be given.

(l) Statement of any substantive matters that need to be resolved.

##### 316.603-71 Approval for modifications to letter contracts.

All letter contract modifications (amendments) must be approved one level above the contracting officer. Request for authority to issue letter contract modifications shall be processed in the same manner as requests for authority to issue letter contracts and shall include the following:

(a) Name and address of the contractor.

(b) Description of work and services.

(c) Date original request was approved and indicate approving official.

(d) Letter contract number and date issued.

(e) Complete justification as to why the letter contract cannot be definitized at this time.

(f) Complete justification as to why the level of funding must be increased.

(g) Complete justification as to why the period of effectiveness is increased beyond 180 days, if applicable.

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(h) If the funding of the letter contract is to be increased to more than 50 percent of the estimated cost of the acquisition, the information required by 316.603–70(j) must be included.

### Subpart 316.7—Agreements

#### 316.770 Unauthorized types of agreements.

##### 316.770–1 Letters of intent.

A letter of intent is an informal unauthorized agreement between the Government and a prospective contractor which indicates that products or services will be produced after completion of funding and/or other contractual formalities. Letters of intent are often solicited by prospective contractors or may be originated by Government personnel. Letters of intent are not authorized by the FAR and are prohibited for use by Department personnel.

##### 316.770–2 Memorandums of understanding.

A “memorandum of understanding” is an unauthorized agreement, usually drafted during the course of negotiations, to modify mandatory FAR and HHSAR provisions in such a manner as to make them more acceptable to a prospective contractor. It may be used to bind the contracting officer in attempting to exercise rights given the Government under the contract, or may contain other matters directly contrary to the language of the solicitation or prospective contractual document. Use of memorandums of understanding is not authorized. Any change in a solicitation or contract shall be made by amendment or modification to that document. When a change to a prescribed contract clause is considered necessary, a deviation shall be requested.

## PART 317—SPECIAL CONTRACTING METHODS

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AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 66 FR 4244, Jan. 17, 2001, unless otherwise noted.

### Subpart 317.2—Options

#### 317.201 Definitions.

An option must:

(a) Identify the supplies or services as a discrete option quantity in addition to the basic quantity of supplies or services to be delivered under the initial contract award;

(b) Establish a price or specify a method of calculation which will make the price certain;

(c) Be agreed to and included in the initial contract award; and

(d) Permit the Government the right to exercise the option unilaterally.

#### 317.204 Contracts.

The total of the basic and option periods shall not exceed 10 years in the case of services and the total of the basic and option quantities shall not exceed the requirement for 5 years in the case of supplies. These limitations do not apply to information technology contracts. However, statutes applicable to various classes of contracts may place additional restrictions on the length of contracts.

[70 FR 11583, Mar. 9, 2005]

### Subpart 317.71—Supply and Service Acquisitions Under the Government Employees Training Act

#### 317.7100 Scope of subpart.

This subpart provides alternate methods for obtaining training under the Government Employees Training Act (GETA), 5 U.S.C. Chapter 41.

#### 317.7101 Applicable regulations.

Basic policy, standards, and delegations of authority to approve training